

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1011 of 1987

to

FIRST APPEAL No 1022 of 1987

with

CROSS OBJECTIONS (Except in FIRST APPEAL No 1013/87)

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DISTRICT COLLECTOR

Versus

PATEL AMBALAL PURSHOTTAM

Appearance:

1. First Appeal No. 1011 to 1022 of 1987
MR CC BHALJA for Appellants
MS REKHA MAHARAJA for Respondent
2. Cross Objections
MS REKHA MAHARAJA for Claimants-Respondents
MR CC BHALJA for District Collector, Mahesana.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/09/98

ORAL JUDGEMENT

1. As these appeals and cross objections arise from one and the same land acquisition notification under section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act, 1894') and from the common judgment and award of the Extra Assistant Judge, Mahesana in Reference Cases No.33/84 to 44/84 decided on 28th July, 1986, the same are being taken up for hearing together and are being disposed of by this common order.

2. The lands of claimants-respondents have been acquired for the purpose of Gozaria-Mahesana Road. These lands are situated in the sim of Mahesana town. Notification under section 4 of the Act, 1894 was published on 8th January, 1981. The Land acquisition Officer passed the award in these matters on 28th February, 1983 under which he offered compensation to the claimants-respondent for the acquisition of their lands for the aforesaid public purpose at the rate of Rs.200/- per Are to the claimants of Land Acquisition Reference Cases No.36/84 to 39/84, 41/84 to 43/84. He offered compensation at the rate of Rs.175/- per Are to the claimants of the Land Acquisition Reference Cases No.33/84 to 35/84, 40/84 and 44/84. All the claimants-respondents felt dissatisfied with this award of the Land Acquisition Officer and prayed to him for making reference to their cases to the civil court. Their application came to be allowed and the Land Acquisition Officer made reference of their cases to Civil Court under section 18 of the Act, 1894. Before the Reference Court, the claimants-respondents claimed Rs.2000/- more per Are as additional compensation. Under the award impugned in these appeals, the Reference Court has fixed Rs.1200/- per Are as market value of the lands in dispute on the date of the notification under section 4 of the Act, 1894. In addition to this, the Reference Court has awarded to the claimants-respondent in some of the cases, compensation under head of severance, canal, pipeline, well etc. Hence, these appeals before this court.

3. Learned counsel for the appellants contended that the Reference Court committed serious error in fixing the market value of the acquired land at Rs.1200/- per Are relying on document Ex.34. The subject matter of the acquisition of the lands in Ex.34 were situated on other side of the Mahesana town and the Reference Court has blindly relied on this document without taking into

consideration the other relevant factors i.e. the distance in between the two lands, fertility, the other use of the lands, situation of lands, developing area etc.. It has next been contended that the award of compensation under the head of severance charges is wholly arbitrary and unjustified. Moreover, the award of compensation under the head of canal or pipeline or well is wholly arbitrary.

4. On the other hand, the counsel for the claimants-respondents contended that the compensation which has been awarded to the claimants-respondents by the Reference Court is highly towards the lower side. There on the record of the Reference Court sufficient evidence had been produced in the form of previous awards but the Reference Court has taken that award only for quantum which is towards the lower side. Replying to the other contentions of the learned counsel for the appellant, counsel for the respondents-claimants contended that the award of compensation under the other heads is perfectly legal and justified.

5. Learned counsel for the claimants-respondents in support of the cross-objections contended that the Reference Court should have awarded compensation to the claimants-respondents at the rate of Rs.6000/- per Are as it has been done by it in respect of the lands of the very town under document Ex.13. The subject matter of the acquisition of the lands in Ex.13 was the lands on the western side of the Mahesana town. She has made reference to other documentary evidence i.e. the previous award of the lands of the same town. However, she contended that in the cross-objections, the prayer has been made for awarding of additional compensation at the rate of Rs.800/- per Are.

6. Replying to the contentions made by the learned counsel for the respondents-claimants, the counsel for the State Government contended that when the award itself is under challenge by the State Government, no question does arise for enhancement of compensation awarded by the Reference court. It has next been contended that the Reference Court has given cogent and justified reasons not to rely on the other documentary evidence.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

8. The lands of claimants-respondents are the agricultural lands which are situated in sim of Mahesana town. From the judgment of the Reference Court, I find

that from the side of the claimants-respondents sizeable evidence has been produced in the form of previous award of the Civil court in respect of acquisition of agricultural lands of Mahesana town. The claimants-respondents have not only produced the instance of previous awards relating to acquisition of same town but they also produced the sale instance.

9. I may now separately deal with the evidence which has been produced by the claimants-respondents in the Reference Court under the heads - sale instance and previous awards.

(i) Sale Instance:

The claimants-respondents produced document Ex.20 which is sale deed dated 8-1-1975. Under this sale deed the land of Survey No.66/1 is sold for Rs.1842/- per Are. The seller Gordhanbhai was examined at Ex.16 and he proved the sale deed. The agreement to sale of this land was executed on 16th December, 1973. The land which was subject matter of this sale deed is situated on the eastern side of Mahesana town. The lands which are subject matter of these appeals are admittedly situated on east of the Mahesana town. The Reference Court has observed that the land under the sale deed Ex.20 is comparable one and on the date of the notification under section 4 i.e. 8-1-1981, the Reference Court looking to the rising price has taken the price of the lands in question which are subject matter of these appeals not less than Rs.3000/- per Are.

(ii) Previous Awards:

Ex.15 is the award of the Civil court in respect of lands of Mahesana sim acquired for G.E.B.. This award was given in the Land Acquisition Reference Case No.26 to 63 of 1974. The lands subject matter of the said award were the agricultural lands situated on the eastern side of Mahesana town. The notification under section 4 in that case was published on 6-5-1971. The court has awarded compensation at the rate of Rs.800/- to Rs.1000/- per Are to the claimants of those References. The Reference Court relying on these awards observed that the market value of the land in the year 1981 will not be less than Rs.2200/- per Are.

Ex.13 is the award of civil court in L.A.R. No.42 to 44/81. In this case, notification under section 4 was published on 5-7-1979. The land which is subject matter of that Reference was acquired for telephone

exchange and which was also agricultural land. This land was on the western side of Mahesana town. The L.A.O. had awarded Rs.2200/- per Are as compensation for acquisition of the said land which on Reference, the Civil Court has enhanced to Rs.5000/- per Are. The Reference Court in this case with reference to that document observed that the market value in the year 1981 will be not less than Rs.6000/per Are.

Then comes the next instance Ex.34, the award of Reference Court in L.A.R. No.29/83. The land acquired under the said award is agricultural land situated on southern side of Mahesana town. In that case, notification under section 4 was published on 19th October, 1978 and court has awarded compensation at the rate of Rs.750/- to Rs.1000/- per Are. On the basis of this award, the Reference Court in this case held that according to ruling prices which show sharp rise during 1978 to 1981, the market value in the year 1981 will be round about Rs.1040/- to Rs.1360/-.

10. As against this voluminous evidence produced by the claimants-respondents, from the side of the appellant no evidence of comparable sale instance or award of the court has been produced. They produced the valuation report Ex.28 and Patraks Ex.29 and 30. However, the Reference Court has not relied upon these documents. After referring to this evidence, the Reference Court has observed that this instances show that prices of agricultural land in Mahesana sim ranges from Rs.1040/to Rs.5000/- in 1981. It has further been observed by the Reference Court that for agricultural lands, the distance of half-a-mile or mile will not make any difference in prices and in support of this observation, he made reference to the decision of this court reported in 3 G.L.R. 778. The Reference Court has observed that the lands which are subject matter of Reference cases were acquired for Road which passes at equal distance from Mahesana town on the eastern side. So there is no scope for allowing different rates. Referring to the award given in L.A.R. No.29/83, the Reference Court has observed that the court in that matter fixed the price per land as the lands were acquired on a large scale for sewage farm pond and some lands had frontage. In the present case, what the Reference Court stated that the lands are acquired for road which passes through the survey numbers of claimants and hence all are entitled to equal rate of compensation for their lands. After making of these observations, the Reference Court has held, "looking to the above mentioned instances and the trend of rising of the market of lands in the vicinity of the

town of Mahesana and relying on the recent award of this Court, which is at Ex.34, he fixed Rs.1200/- per Are as the market value of the land in question."

11. This approach of the Reference Court is difficult to accept. From the sale instance which is of the year 1975 of the agricultural land of sim of Mahesana town, which was situated on eastern side of Mahesana town, the Reference Court has held that the value of the land in dispute will not be less than Rs.3000/- per Are in the year 1981. It is not out of context to state that the Reference Court has to find out the market price of the land acquired on the date of the publication of notification under section 4 of the Act, 1894. So relying on the document Ex.20, the sale instance of the year 1975, the Reference Court has taken the market price of the lands which are subject matter of this acquisition not less than Rs.3000/- per Are in the year 1981. Similarly, if we go by the document Ex.15 there also the market value of the land which is subject matter of Reference is accepted to be not less than Rs.2200/per Are. On the basis of document Ex.13, the market price of land subject matter of this Reference was taken to be not less than Rs.6000/- per Are on the date of notification under section 4 of the Act, 1894 but curiously enough the court has only relied upon document Ex.34 solely and even the maximum of price taken on the basis of this document has not been awarded. The Reference Court in this case even has not taken the best out of the worst. From the judgment of the Reference Court, and as stated earlier, on the basis of Ex.34 it has found that the market value of the land in the year 1981 will be round about Rs.1040/to Rs.1360/ but it has taken the market price of the lands which are subject matter of this Reference to be Rs.1200/- per Are. If we go by the date of notification under section 4 then Ex.15 is of 6-5-1971, Ex.13 is of 5-7-1979, Ex.34 is of 19-10-1978 and sale deed Ex.20 is dated 8-1-1975.

12. With reference to the sale deed of 8-1-1975 the market price of the land in these appeals has been taken to be Rs.3000/per Are and with reference to the notification dated 6-5-1971, it was taken to be Rs.2200/per Are. With reference to notification dated 5-7-1979 it was taken to be about Rs.6000/- per Are and with reference to notification dated 19th October, 1978, it was taken to be Rs.1040/- to Rs.1360/- per Are. The lands subject matter of documents Ex.15 and 20 were situated on the eastern side of Mahesana town. The lands which were subject matter of Ex.13 were situated on the western side of the Mahesana town and lands which were

subject matter of Ex.34 were situated at the southern side of Mahesana town. The market price of the lands situated on eastern side of the Mahesana town was taken to be Rs.3000/- and Rs.2200/per Are with reference to documents Ex.20 and 15 respectively in the year 1981. The market price of the lands situated on the western side of Mahesana town was taken to be Rs.6000/- per Are in the year 1981 and that of southern side was taken to be Rs.1040/to Rs.1360/- per Are in the year 1981.

13. I fail to see how the Reference court could have relied only on Ex.34. The comparable previous awards would have been Ex.15 and Ex.13. Even if it is taken that the lands acquired for telephone exchange may not be vast land but that is not the case with document Ex.15. Otherwise also, when these two lands and the lands which are subject matter of these appeals are situated on western side of the Mahesana town, it is understandable that the Reference Court could have taken the mean of the two market prices fixed with reference to documents Ex.13 and 15 i.e. $6000 + 2200 = 8200$ and mean thereof Rs.4100/-. However, in this case, the claim of claimants-respondents was only of Rs.2000/- per Are and taking into consideration this aspect, in all the eventualities, their claim deserves to be accepted to the extent what they prayed for. The minimum of the price of western side of Mahesana town as per the Reference Court award is Rs.2200/- with reference to Ex.15 and that much could have been awarded but the Reference Court has gone too conservative and it has chosen to fix the market price of the land relying on Ex.34 only. That approach is difficult to appreciate and more difficult to maintain.

14. Taking into consideration the totality of the facts of this case, I find sufficient merits in the contention of the counsel for the claimants-respondents that the award made by the Reference court is towards the lower side.

15. So far as the challenge of the State of Gujarat to that part of the award of Reference Court which relates to awarding of compensation of well, pipeline etc. I find sufficient merits in this challenge and the award to that extent deserves to be set aside. Otherwise also, learned counsel for the respondents-claimants failed to support this part of the award of the Reference Court.

16. In the result, all these appeals of the State of Gujarat are dismissed except First Appeal No. 1020/87

which arise from L.A.R No.42/84 which is allowed to the extent under which the compensation of Rs.3000/- has been awarded for the well by the Reference Court. Rest of the claim made in this appeal by the State of Gujarat is rejected. In all the appeals except in F.A. No.1013/87, the claimants-respondents filed the cross-objections. The cross objections are allowed and the claimants-respondents are granted additional compensation at the rate of Rs.800/- per Are together with all other consequential benefits permissible on this amount as per law. The parties are directed to bear their own costs of the appeals and cross-objections.

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